



EC-2002-030
II-A-015

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 22 1997

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

Anthony Scaccia, President
City Ready Mix Inc.
104-17 148th Street
Jamaica, NY 11435

RE: NOTICE OF VIOLATIONS: File No. AED/MSEB - 4701

Dear Mr. Scaccia:

On February 22, 1996, authorized representatives of the United States Environmental Protection Agency (EPA) inspected City Ready Mix Inc., located at 104-17 148th Street, Jamaica, New York. The inspection was conducted to determine compliance with § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations issued thereunder (40 C.F.R. Part 80, Subpart B). Where inappropriate fuels are used in internal combustion engines, the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

The applicable regulations provide that no person may manufacture, introduce into commerce, sell, offer for sale, supply, dispense, offer for supply or transport any diesel fuel for use in motor vehicles unless such diesel fuel meets the applicable standards specified in 40 C.F.R. § 80.29 (a). This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.

As a result of our inspection, EPA has determined that diesel fuel was dispensed or introduced into a storage tank for low sulfur fuel and into the fuel tanks of trucks owned by City Ready in violation of 40 C.F.R. § 80.29 (a) in that:

- 1) the fuel in Truck #68 had visible evidence of dye and contained 0.116 wt% sulfur,
- 2) the fuel in Truck #67 contained 0.1212 wt% sulfur,
- 3) the fuel in Truck #28 had visible evidence of dye and contained 0.0577 wt% sulfur,
- 4) the fuel in Truck #69 had visible evidence of dye and contained 0.0702 wt% sulfur,
- 5) the fuel in Truck #71 had visible evidence of dye and contained 0.0656 wt% sulfur,
- 6) the fuel in Truck #66 had visible evidence of dye and contained 0.0562 wt% sulfur,

Each of these cited instances is a separate violation of the applicable requirements that diesel fuel for use in motor vehicles be free of visible evidence of dye and have a sulfur percentage no greater than .05 wt%. As a wholesale purchaser-consumer, City Ready Mix, Inc., is liable for the Violations of § 211 of the Act and of 40 C.F.R. § 80.29(a) pursuant to 40 C.F.R. § 80.30 (f).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of each such violation and the economic benefit or savings resulting from the Violations. Section 205(c) further authorizes the Administrator to compromise or remit, with or without conditions, any such penalty. After consideration of the magnitude and the gravity of the Violations, the apparent size of your business, and your history of compliance with the Fuels Regulations, we propose a civil penalty for the Violations alleged in this Notice of Twenty-One Thousand Dollars (\$21,000.00).

We encourage early settlement of such matters. The settlement process provides substantial flexibility for reducing the statutory penalty, particularly if the alleged Violations are corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

The EPA attorney designated below has been assigned to this case. Please contact her regarding this Notice of Violation:

Angela E. Fitzgerald, Attorney
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch,
Air Enforcement Division
401 M Street, SW (2242A)
Washington, DC 20460
Phone Number: 202/564-1018

Please let me emphasize once again that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Bruce C. Buckheit".

Bruce C. Buckheit, Director
Air Enforcement Division